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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,496	01/17/2002	William R. Mass	279.397US1	7282

21186 7590 03/18/2005

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EXAMINER

JASTRZAB, JEFFREY R

ART UNIT PAPER NUMBER

3762

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary	Application No. 10/052,496	Applicant(s) MASS ET AL.	
	Examiner Jeffrey R. Jastrzab	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 28-47 is/are rejected.
- 7) ☐ Claim(s) 20-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/10/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see paragraph 1, filed 1/10/05, with respect to the rejection(s) of claim(s) 1-5, 1, 14-25, 27-40 and 44-47 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Thompson et al., US-6,675,049.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 8, 10, 12, 14-19, 28-39, 42, 44-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Thompson et al., US 6,675,049. See in particular Figures 3 and 4. An RF module (262) is mounted on (or in) an implantable lead that is attached to an IMD. The module includes an antenna and may include RF transmit/receive circuitry per column 6 lines 18-40. The lead body is inherently detachable/user-attachable from the IMD and its proximal end connector would be considered the "interface connector, coupled to the RF module, adapted to attach the telemetry module to an implantable medical device". As to Claim 5, the "energy source"

Art Unit: 3762

would be considered the energy coupler (col. 6 line 2) of Thompson et al. As to Claim 6, the claimed particulars of the RF circuit are deemed to be inherent to the Thompson RF transmitter. As to Claim 34, "snap-on" is broad enough to encompass the friction fit of a lead absent structure to delineate the two.

Claim Rejections - 35 USC § 103

Claims 7, 9, 11, 13, 40, 41, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. The Thompson et al. fails to teach phase or amplitude as the transmission modality, however, absent any teaching of criticality or unexpected result for these, the specific type of communication and its corresponding circuitry would have been an obvious design choice at the time of the invention for use in the Thompson system and would have amounted to a mere substitution of known functional equivalents. Although Thompson et al. lack a battery per Claim 40, merely incorporating a local energy storage component for the telemetry circuit lacks patentable moment as such modifications are notorious to the electrical implant arts.

Allowable Subject Matter


Claims 20-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 2724947. The examiner can normally be reached on Monday - Wednesday 5:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
3/14/05